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**Testimony
Before the Select Committee on Indian Affairs
United States Senate**

**Hearing on S. 519
The Native American Capital Formation and Economic Development Act of 2003
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Mr. Chairman and distinguished members of the Committee, good morning. My name is Katherine Spilde and I am a Research Fellow with the Kennedy School of Government, Harvard University. Prior to my appointment at Harvard, I served in a number of research and policy positions here in Washington, D.C., including work with the Congress' National Gambling Impact Study Commission (NGISC) and the National Indian Gaming Association (NIGA). My background includes a Ph.D. in cultural anthropology, which frames my research on Indian policy and economic development. I am honored to be here today to participate in this discussion of the opportunities that could potentially be realized through the creation of a tribally-owned development corporation.

I commend you for undertaking the what I consider to be a complicated two-fold task: first, identifying obstacles to economic development in Indian Country, including systemic issues, with an eye toward addressing or eliminating them; and second, identifying existing opportunities that can be maximized and exploited for the benefit of Native people. After assessing both obstacles and opportunities, I believe it will be clear that the creation of a tribally-owned development corporation, as envisioned in S. 519, could be an effective effort in addressing the on-going challenge of supporting sustainable economic development in Indian Country.

I am here today to comment generally on the need for a more cogent federal economic development model rather than to respond directly to points in S. 519. I am honored to be here today to offer some insights from my research on Indian policy in general and Indian gaming in particular. I have had the privilege of doing research on Indian gaming for over ten years. My research has taken me to over 125 Indian reservations and I have met with countless tribal leaders and developers about investment of gaming revenues and broader questions of economic development. Because much of my research was policy-oriented, my broader agenda was aimed at addressing the bigger questions, "Is Indian gaming working?" and "How can tribal governments maximize their gaming successes and diversify their economies?"

In sum, my research strongly argues that Indian gaming *is* working and its success is built upon four key features: 1) Tribal governments initiate Indian gaming rather than

having it imposed upon them; 2) Indian gaming recognizes tribal sovereignty and encourages tribes to exercise their sovereignty as a development resource; 3) Indian gaming creates a tribal tax base, allowing tribal governments to fund their social programs; 4) Indian gaming supports “nation building” activities, encouraging the creation of strong institutions of self-governance and partnership building for diversification.

Indian gaming works because it recognizes that creating an economy and building a nation are mutually reinforcing activities. Harvard research finds that when tribes make their own decisions about what approaches to take and what resources to develop, they consistently out-perform non-tribal decision makers. Tribal governmental gaming has created a historical moment where tribal decision-makers are playing a more prominent role in Indian country than ever before, making Indian gaming the most successful nation- and economy-building strategy in American history. For that reason, I think it is important to extract lessons from Indian gaming that could facilitate the creation of a successful tribally-owned development corporation.

I am optimistic that the creation of a tribally-owned development corporation could mirror the successes that we have already seen at the tribal level. A tribally-owned development corporation similar to that described in S. 519 could potentially represent the extension of gaming’s benefits to more tribes in the United States, allowing gaming to act more as a federal program in spite of its ‘opt-in’ features. However, in order to be successful, any federal initiative would more likely succeed if it mirrored Indian gaming policy in at least one critical way: first, it should be initiated and considered on a case-by-case basis at the tribal level rather than be imposed.

Why Indian Gaming Works

American Indians, both on and off reservations, have seen enormous improvements in their economic circumstances over the past two decades. Much of this improvement is attributable to Indian gaming. Just last week, the National Indian Gaming Commission (NIGC) revealed that national 2003 gross gaming revenues for Indian gaming facilities topped \$16.7 billion, an increase of \$2 billion or 13.7 percent over 2002 gross gaming revenues. Indian gaming has created a significant ripple effect through Indian Country by generating jobs, stimulating tribal institution-building, and facilitating diversification projects.

Not surprisingly, the gains from Indian gaming are not being realized on an equal basis across Indian Country. Approximately two-thirds of all tribal governments are not involved in gaming at all, and many tribes that do offer gaming have small facilities or are limited by the permitted scope of gaming in the state.

The fact that Indian gaming revenues are not evenly distributed across the tribes is often raised as evidence that Indian gaming is not “working.” Of course, the 1988 Indian Gaming Regulatory Act (IGRA) was not intended to act as a federal program, such as Indian programs funded by tax dollars, and IGRA’s framers clearly noted that, “not all tribes can engage in profitable gaming operations.” Rather, IGRA provides a framework for regulating gaming on Indian lands for those tribes that have meaningful markets and chose to pursue gaming. This feature—tribal initiative for opting in or out of gaming---makes Indian gaming an *option* for tribal governments, but one they must fully fund and develop, assuming all costs and risks themselves.

While it is clear that Indian gaming works for many tribes, there are also many obstacles to obtaining financing. We are all familiar with the fantastic success of handful of tribes with access to substantial gaming markets. These tribes have had very little trouble gaining access to capital once Indian gaming's legal and regulatory issues are clarified. However, these large operations are unusual and represent about 10% of all tribes in the United States. Rather, the majority of the smaller and mid-size projects are difficult to finance and could benefit from access to capital and expertise. Even when these projects do get financed, tribal governments are not always in a position to command terms that they may find desirable. There is certainly a need for additional vehicles for tribal financing, for gaming and otherwise, and I find the Committee's efforts on this issue to be laudable.

A Tribal Initiative Not a Federal Program

In its 1999 Final Report to Congress and the President, the National Gambling Impact Study Commission (NGISC) stated, "There was no evidence...suggesting any viable approach to economic development across the broad spectrum of Indian country, in the absence of gambling." While the NGISC did not address the complex reasons why Indian gaming is the only approach to work, it seems clear that one of the characteristics most responsible for Indian gaming's viability is the fact that it is a tribally-driven initiative and not a federal program. Until recently, economic development in Indian Country was largely dictated by federal funding initiatives which were often splintered, uncoordinated and ineffective. When tribal governments began exercising their jurisdiction over gaming activities and developing the suitable governmental institutions to do so, Indian gaming quickly became an economic development engine. According to sociologist Stephen Cornell, the fact that Indian gaming was tribally-driven may be the primary reason for its success; he writes, "As long as the Bureau of Indian Affairs or some other outside organization carries primary responsibility for economic conditions on Indian reservations, development decisions will tend to reflect outsiders' agendas. Transferring control over decisions to tribes does not guarantee success, but it tightens the link between decision making and its consequences."

There are a host of reasons why it is critical for tribal governments to make their own development decisions, including the decision of whether (and *how*) to pursue gaming as an economic development strategy. The choice to pursue gaming rests upon a number of community-based considerations, ranging from cultural beliefs to market limitations. For a few tribes, Indian gaming represents the diversification of an existing economy that previously relied upon natural resource extraction or tourism; for others, gaming's high profit margins created their first opportunity to attract developers willing to invest on-reservation and bankroll the infrastructure necessary to support large-scale development; for still others, Indian gaming is a strategy for job creation rather than solely an avenue to generate a revenue stream for tribal programs. Of course, the bulk of the 561 federally-recognized tribes in the United States do not engage in gaming at all. What seems clear is that those tribes that pursue gaming are in a position to create both an economic enterprise and governmental structure that is appropriate and functional for their particular tribal community. This feature---control over whether and how to develop appropriately---sets Indian gaming apart from any other economic development strategy to date. Indian gaming is a development tool available to tribal governments but not

imposed upon them, transferring the development decision to the tribal governments and citizens who are the closest to the impacts of that decision and therefore more likely to make the right choice for themselves.

Indian Gaming Recognizes Tribal Sovereignty

When Congress passed the Indian Gaming Regulatory Act (IGRA), tribal governments had already initiated gaming on Indian lands as a way to generate much-needed governmental revenue. IGRA was intended to balance the interests of the various governments (tribal, local, state and federal) while also acknowledging that, in the words of Senator Inouye (D-HI), “Indian tribes are quite capable of managing their own affairs.” IGRA created a new federal agency, the National Indian Gaming Commission (NIGC), to oversee tribal regulation of gaming and assist in certain aspects of casino operations, including management agreements and licensing. IGRA also granted new rights to state governments by developing a tribal-state compacting requirement for class III gaming and allowing state officials to play a role in approving off-reservation land acquisitions. (IGRA included provisions for local governments to consult on land acquisitions as well.) Tribes were openly opposed to these provisions in IGRA and two tribes filed suit claiming that these new intrusions into tribal affairs were unconstitutional.

In spite of the creation of new roles for other governments with an interest in Indian gaming, IGRA’s framers were clear in their recognition of fundamental aspects of tribal sovereignty. Indeed, IGRA reiterates that states cannot expect to directly benefit from Indian gaming through assessing a tax or fee on any Indian tribe as a condition of negotiating a tribal-state compact (or for any other reason.) In the Senate Committee Report generated for IGRA, Sen. John McCain (R-AZ) underscores the point that, “Tribes have been and will continue to be permanent governmental bodies exercising (those) basic powers of government...to fulfill the needs of their members. Under our constitutional system of government, the rights of Tribes to be self-governing and to share in our federal system must not be diminished.” McCain’s reminder reflects the point memorialized in IGRA’s findings: “a principal goal of Federal Indian policy is to promote tribal economic development, tribal self-sufficiency, and strong tribal government.”

Indian gaming rights are a clear expression of retained jurisdiction and tribal sovereignty. While some gaming opponents portray Indian gaming rights as a “loophole,” this portrayal overlooks the clear confirmation of tribal regulatory authority in a succession of Indian gaming court decisions, culminating in the Supreme Court’s 1987 ruling in *Cabazon*. The fact is that states’ jurisdiction over Indian nations is limited to what has been expressly delegated to them by Congress. Meanwhile, tribal sovereignty is inherent, meaning that tribal governments are assumed to retain jurisdiction unless expressly limited by Congress. These differing sources of power are significant and clearly upheld in IGRA and other federal laws affecting tribal governments.

Indian Gaming Creates a Tax Base

Economists agree that one of the fundamental reasons for the success of Indian gaming is that it allows tribal governments to break free of federal planning models to create an export-based economy (attracting people to Indian lands to gamble constitutes

“exporting” gambling.) It can be argued that the primary economic development component of Indian gaming is its ability to generate a reliable tribal tax base for tribal governments, often for the first time. The NGISC reported its findings on this feature of Indian gaming as follows: “As was IGRA’s intention, gambling revenues have proven to be a very important source of funding for many tribal governments, providing much-needed improvements in the health, education, and welfare of Native Americans on reservations across the United States.”

When IGRA was being debated in Congress, over 100 bingo games had already been started on Indian lands, generating \$100 million annually. The fact that this revenue was already having a positive impact on tribal governments is clear in IGRA’s legislative history, which notes that, “Bingo revenues have enabled tribes, like lotteries and other games have done for State and local governments, to provide a fuller range of government services to their members than would otherwise have been possible...the income often means the difference between an adequate governmental program and a bare bones program which is totally dependent on Federal dollars.”

Tribal governments have historically faced crushing budget deficits. Indian gaming revenues allow many Indian nations to create and maintain basic tribal services ranging from law enforcement and health care to education and housing. With regard to social programs, the NGISC found that, “all these programs have historically suffered from significant neglect and under-funding by the federal government. Although the problems these programs are aimed at reducing continue to plague Indian communities at significant levels, gambling has provided many tribes with the means to begin addressing them.”

The available evidence on social conditions in Indian country provides a long list of alarming comparisons between tribal social conditions and U.S. national averages. Since the passage of IGRA in 1988, tribal governments are obligated by federal law to invest gaming revenues in ways that improve tribal welfare. Section 11 of IGRA requires that net revenues from “any tribal gaming” be used for 5 primary purposes (See figure 2). Generally speaking, all revenues are earmarked for governmental activities or public investment. Tribal governments make a host of investments in their own—and surrounding---communities. As one tribal leader remarked, “sovereignty ain’t cheap.”

Indian Gaming Triggers ‘Nation Building’ Activity

In keeping with the federal goal of tribal self-determination, tribal governments invest heavily in community-based projects and balance the need for a revenue stream to support the tribal budget with the goal of reforming institutions inherited from centuries of federal government intrusion. In addition to funding essential tribal social programs, tribal governments are investing in what are often called “nation building” projects, ranging from governmental institution building to cultural revitalization. IGRA reflects the related strategies of strengthening both tribal economies and tribal nations in its two relevant, primary stated goals: to promote economic development for Indian nations and to strengthen tribal governments. Most analysis of tribal governmental gaming focuses on the economics of Indian gaming, claiming that Indian gaming is only “working” when tribes generate significant revenue streams. However, considering Indian gaming as solely an economic activity overlooks the second, perhaps even more critical, goal of IGRA: that of strengthening tribal governments through nation building.

In virtually all tribal governments, the provisions of IGRA itself have triggered nation-building activity. For example, IGRA requires that tribal governments create a gaming commission before they open a gaming facility. Because tribal governments differ widely in form and tradition, IGRA does not require that tribes adopt any particular structure for their commissions, although NIGC bulletins suggest that tribal gaming commissions be formed as independent bodies. Therefore tribes have had to determine for themselves how to create a gaming commission that simultaneously “matches” their cultural prerogatives and current governmental structure while it also fulfills its prescribed functions of regulatory oversight and compliance. For some tribes, this process of institution-building triggers a full-scale assessment of the cultural underpinnings of the tribal government structure and prompts further discussion of how to balance the tribe’s growing business needs with the need to effectively govern and fund existing and anticipated tribal social programs.

What has emerged in this “creative moment” sparked by Indian gaming is a range of innovative institutions self-governance unrelated to IGRA. For example, many tribes have chosen to separate their business and governmental functions through the creation of separate business boards. These boards take many forms and have many names (e.g. development corporations, corporate commissions or business authorities) but they seem to share some common goals: to facilitate relationship-building with investors and developers, to streamline business transactions, to provide a degree of insulation between tribal businesses and tribal politics, to develop institutional memory, to provide a clear tribal voice when addressing issues related to consultants or other contractors and to create a stable environment in which investors feel secure.

Harvard research on economic development has observed that the separation of business and government functions facilitates economic development in non-gaming contexts. Tribal governments are demonstrating just how successful that process can be in a gaming environment as well. One key indicator of successful nation building activity is the growing trend of economic diversification across Indian country. Because economic diversification often relies upon the creation of new tribal governmental institutions to facilitate partnership building with outsider investors or managers, examining the scope of diversification provides a unique framework for evaluating the ways that IGRA’s twin goals are being realized in many parts of the United States.

Indian Gaming Facilitates Economic Diversification and Partnerships

Economic diversification takes many forms, but there is a general pattern of diversification that can be observed across Indian country. Most post-gaming diversification in Indian Country provides direct support for the core business, the Indian gaming facility. In keeping with common business strategy, tribal governments create businesses that enhance their main economic engine by building ancillary hotels, restaurants, gift shops and other amenities that add value to the business in at least two ways: by generating additional revenues through the amenities themselves and by increasing gaming revenues by making the gaming environment more attractive and convenient for players.

After enhancing the gaming environment, some tribes extend beyond gaming into other tourist-related areas in order to take advantage of visitors to the reservation, whether they intend to gamble or not. Developing other tourist-related activities on the

reservation allows tribes to capitalize on their hospitality expertise while also appealing to a wider customer base. For example, while many families may not visit an Indian gaming facility, there is a strong demand for water parks, golf courses, museums, outlet malls, and other activities that may appeal to the gambler's family or the non-gambler. Tourism development based on a variety of different resources also has the potential to support the core business by simply bringing people to the reservation in the first place.

Another phase of diversification departs from gaming and tourist development but nonetheless relies upon tribal capital and natural resources which, prior to gaming and nation building, were absent or under-developed. For example, some tribes now have the capital to invest in water bottling plants, fruit companies or ranches that allow them to export their products to off-reservation markets. Additionally, some tribal governments are investing capital in off-reservation ventures such as urban hotels and restaurants, which allow them to cross-market their on-reservation facilities and expand their tribal resumes.

For some tribes, Indian gaming has generated sufficient capital for economic diversification. For others, Indian gaming has provided valuable experience in hospitality and tourism that can be translated into future business ventures, even while current revenues are not sufficient for substantial diversification efforts. What nearly all tribes have in common is that success in Indian gaming—both economic and governmental success—has given tribes an established track record in business and management that makes them more attractive to outside investors. Just as a number of tribes initially created partnerships or hired consultants to learn the gaming business, some tribal governments engaged in diversification are building relationships with outside experts or investors in other industries, resulting in additional non-gaming jobs while also allowing tribes to assert their sovereignty and create a larger pool of political supporters.

It is for these reasons that a tribally-owned development corporation could contribute to and facilitate the extension of Indian gaming's benefits to Indian Country. Regardless of which form the entity takes, I support the Committee in its goals of creating a unified economic development model that incorporates research, best practices and measurable outcomes among its key features. Additionally, my research confirms that encouraging tribal participation on a case-by-case basis would greatly improve this entity's chances of success.

Thank you for the opportunity to present my ideas with you today.